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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA
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7 RYAN C. BUNDY,

8 Plaintiff,

9 vs.

10 UNITED STATES OF AMERICA, *et al.*,

11 Defendants.
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Case No. 2:17-cv-1127-JAD-GWF

ORDER

13 This matter is before the Court on Plaintiff's Motion for Recusal of Magistrate Judge (ECF
14 No. 9), filed on April 27, 2017.

15 Plaintiff states that he intends to object to the assignment of civil matters to the undersigned
16 magistrate judge, but does not set forth the basis for recusal. There are two federal statutes, 28 U.S.C.
17 § 144 and 28 U.S.C. § 455, that address the standards for recusal. The substantive standard for
18 recusal is the same under both sections. Recusal is appropriate when "a reasonable person with
19 knowledge of all the facts would conclude that the judge's impartiality might reasonably be
20 questioned." *Pesnell v. Arsenault*, 543 F.3d 1038, 1044 (9th Cir. 2008). In the absence of a
21 legitimate reason to recuse himself, a judge should participate in cases assigned. *United States v.*
22 *Holland*, 519 F.3d 909, 912 (9th Cir. 2008).

23 The alleged bias must stem from an "extrajudicial source." *Peterson v. Miranda*, 2013 WL
24 1500984, at *3 (D. Nev. Apr. 11, 2013) (quoting *Liteky v. United States*, 510 U.S. 540, 554–56
25 (1994)). "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the
26 course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or
27 partiality motion unless they display a deep-seated favoritism or antagonism that would make fair
28 judgment impossible." *Liteky*, 510 U.S. at 555.

1 Although § 144 and § 455 have the same substantive test, the procedural requirements under
2 the two sections differ. Under § 144, the legal sufficiency of the motion and affidavit is determined
3 by the judge against whom recusal is sought. *United States v. Azhocar*, 581, F.2d 735, 738 (9th
4 Cir.1978). Once a determination of the legal sufficiency is made, the motion for recusal is referred to
5 another judge. *Id.* Where the party seeking recusal fails to include facts that on their face warrant
6 recusal, referral of the motion is unnecessary. *United States v. Scholl*, 166 F.3d 964, 977 (9th Cir
7 .1999). Here, Plaintiff has not submitted the required affidavit of prejudice and, therefore, his request
8 for recusal under § 144 is insufficient.

9 Under § 455, recusal is self-enforced by the judge and referral of the motion is not required to
10 consider the merits of the motion. *United States v. Sibla*, 624 F.2d 864, 868 (9th Cir. 1980). Plaintiff
11 does not set forth and there is no factual basis to question the undersigned's impartiality in this case.
12 The undersigned's order detaining Plaintiff in *United States v. Bundy, et al.*, 2:16-cr-00046-GMN-
13 PAL, does not constitute a valid basis for recusal or bias and does not preclude the undersigned from
14 presiding over the civil case alleging that detention violates Plaintiff's civil rights. The order of
15 detention was not based on extrajudicial considerations and presumes that Plaintiff will be detained in
16 accordance with the law. Accordingly,

17 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Recusal of Magistrate Judge (ECF
18 No. 9) is **denied**.

19 DATED this 17th day of May, 2017.

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22 GEORGE FOLEY, JR.
23 United States Magistrate Judge
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